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JUL - 9 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

)
) MM Docket No. 93-51

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Summary

Huber asks the Presiding Judge to specify real-party-in-interest and two misrepresentation issues against Staton. Nonvoting stockholder Kenneth Ramsey, and his consultant, Charlie Thompson, have controlled the preparation and prosecution of the Staton application. When Staton certified that it was financially qualified, it misrepresented its financial qualifications because it did not have a bank letter at the time of certification. Staton also misrepresented in its original application that Ms. Staton had reviewed Mr. Ramsey's financial statement.

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FEDERAL COMMUNICATIONS COMMISSION
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of
MARTHA J. HUBER, et al.

For Construction Permit for a
New FM Station on Channel 234A
in New Albany, Indiana

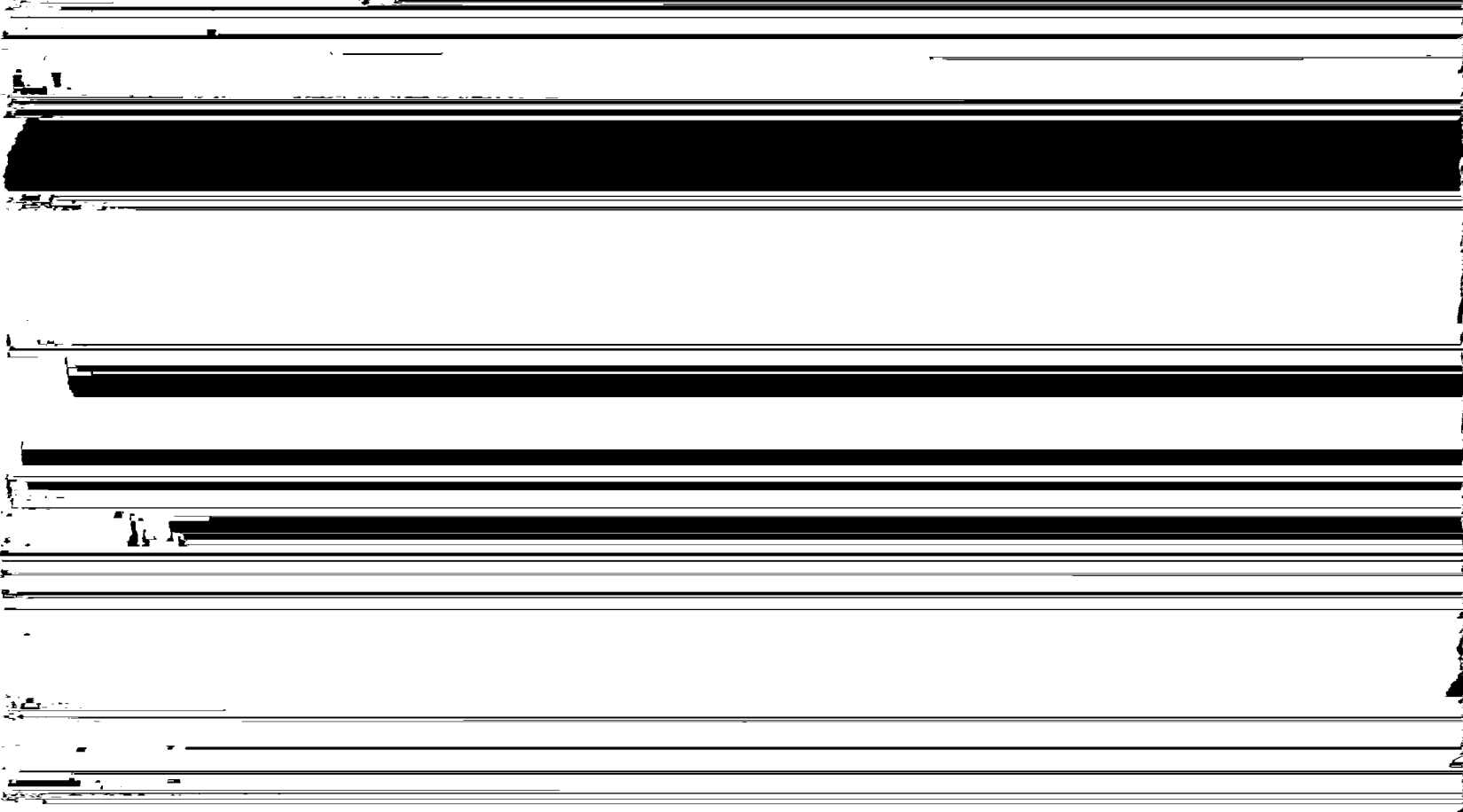
)
) MM Docket No. 93-51
)

) File Nos. BPH-911114ME,
) et al.
)

TO: Honorable Richard L. Sippel
Administrative Law Judge

PETITION TO ENLARGE ISSUES AGAINST
STATON COMMUNICATIONS, INC.

Martha J. Huber (Huber), by her attorneys, now petitions



I. Procedural Matters

This petition is timely pursuant to Section 1.229(b)(3) of the Commission's rules. It is based upon the depositions of Staton principals Mildred Staton and Kenneth Ramsey under the standard comparative issue. Counsel for Huber received the transcript of those depositions on June 24, 1993. This pleading is being filed within fifteen days after Huber received those materials. The petition is therefore timely.

The petition complies with Section 1.229(d) of the Commission rules because its allegations of fact are supported by deposition testimony taken under oath and by documents which may be officially noticed, including Staton's application, and documents produced in discovery.

Pursuant to Section 1.229(e) of the Commission's rules, Huber is identifying the documents she wishes to be produced and the depositions she wishes to take in the attached appendix to this petition.

If the Presiding Judge adds the misrepresentation/lack of candor issues requested in this petition, he would be required to issue a Notice of Apparent Liability to Staton for a forfeiture. Section 1.229(f) of the Commission rules. That rule indicates that the notice shall indicate that "the applicant may be liable for a forfeiture of up to the maximum statutory amount." In this case, where there was at least two discrete misrepresentations, the maximum statutory amount is

\$50,000, or \$25,000 for each violation. See 47 U.S.C. §503(b)(2)(A).

II. Background

Staton is a corporation with both voting and nonvoting stock outstanding. Mildred J. Staton, a black female who lives within the service area of Staton's station, owns 200 shares of voting stock. Kenneth L. Ramsey owns 800 shares of nonvoting stock.¹ Exhibit 2 of Staton's application demonstrates that Ramsey had interests in twelve other FM applications in which he held eighty percent of the equity as nonvoting stock.

It was Mr. Ramsey and his agent, Charlie Thompson, who took all of the significant actions involved in organizing an applicant for the New Albany channel and filing the application. The process of filing for the channel began when Mr. Thompson, an ex-broadcaster and consultant, called Mr. Ramsey in September 1991 and informed Mr. Ramsey that "there was an investment opportunity over in New Albany, Indiana" and that the application would cover Louisville, Kentucky. Ramsey Dep. Tr. 20-21.² Mr. Ramsey had previously used Mr. Thompson as a "consultant" in the other FM applications in which he was involved, and Mr. Thompson informed Mr. Ramsey of filing

¹ Pertinent portions of Staton's application are submitted as Attachment 1 to this application.

² Pertinent portions of Mr. Ramsey's deposition transcript are submitted as Attachment 2 to this petition.

windows as they opened. Ramsey Dep. Tr. 23-24. Mr. Ramsey had known Mr. Thompson since 1984. Ramsey Dep. Tr. 21. Mr. Thompson provided Mr. Ramsey with the public notice listing the filing window. Ramsey Dep. Tr. 22. Mr. Ramsey's primary concern was ensuring that the station would cover Louisville. Ramsey Dep. Tr. 26.

Ramsey also contracted with Mr. Thompson to have Mr. Thompson file the application and "taking care of the details." Ramsey Dep. Tr. 22. They negotiated a fee of \$3,450 for Mr. Thompson's services. Id. Mr. Ramsey described Mr. Thompson as "the driving force behind it. In other words, he saw that it got done." Ramsey Dep. Tr. 25. Mr. Ramsey hired Mr. Thompson to hire a consulting engineer, obtain an attorney, and put the application together. Ramsey Dep. Tr. 22, 25.

In late October of 1991,³ Charlie Thompson called Ms. Staton. Mr. Thompson mentioned that he was representing an individual who was interested in applying for the New Albany channel, but he did not identify the individual. Staton Dep. Tr. 12.⁴ Mr. Thompson asked if Ms. Staton was interested and asked about her broadcast background. Id. Ms. Staton expressed interest, and she sent her resume to Mr. Thompson. Staton Dep. Tr. 13. Ms. Staton and Mr. Thompson then met in Louisville in early November 1991. Staton Dep. Tr. 13-14. Mr. Thompson did not identify Mr. Ramsey at this meeting. Id. Mr. Thompson did not go into detail about a structure, but he did mention that Ms. Staton would have a minority interest and the as yet unidentified person would be the financial backer. Staton Dep. Tr. 14-15, 17-18. Mr. Thompson told her she would have to work at the station. Staton Dep. Tr. 59.

A couple of days later, Mr. Thompson informed Ms. Staton that she had been "accepted," and he finally identified Mr. Ramsey. Staton Dep. Tr. 16-17. Mr. Thompson did not give her any detailed information on Mr. Ramsey. Staton Dep. Tr. 17. Mr. Thompson also informed Ms. Staton that Stanley Emert would be the attorney responsible for the application. Staton Dep. Tr. 18.

³ Staton's application was filed on November 15, 1991.

Ms. Staton then immediately received a phone call from Mr. Ramsey. Staton Dep. Tr. 19. Mr. Ramsey introduced himself. He told her she would have a twenty percent interest and he would have an eighty percent interest and would be "a silent partner." Staton Dep. Tr. 19-20. He also told her he would be the financial backer and would make the financial arrangements. Staton Dep. Tr. 19. At that point, Ms. Staton believed she had a deal. Staton dep. Tr. 58-59.

Exhibit 1 to the Staton application is the Stock Subscription and Shareholder's Agreement of Staton Communications, Inc. That agreement obligates Mr. Ramsey to loan up to \$150,00.00 [sic] to prosecute Staton's application. Footnote 1 to the agreement states:

The parties hereto have agreed that the financial

application on November 13, 1991. The letter that Staton obtained from that bank, which is submitted as Attachment 4 to this petition, is dated November 15, 1991, or two days after

Ramsey has paid \$12,000-\$15,000. Ramsey Dep. Tr. 46. Ms. Staton does not have \$10,000. Staton Dep. Tr. 79.

As noted above, Ms. Staton had no role in hiring Stanley Emert, Staton's original counsel. Ms. Staton did not know if Mr. Emert billed on an hourly basis or some other basis. Staton Dep. Tr. 62. In March of 1993, Mr. Ramsey (not Ms. Staton) determined that new counsel would have to be hired because Mr. Emert "had dropped the ball on some other stuff." Ramsey Dep. Tr. 44, Staton Dep. Tr. 26. Mr. Ramsey did not inform Ms. Staton what the problems with Mr. Emert were. Staton Dep. Tr. 60-61. Ms. Staton claimed she retained Staton's current counsel. Staton Dep. Tr. 25. In fact, Mr. Ramsey learned of current counsel, whose firm he had worked with in connection with cellular radio, and "recommended" them to Ms. Staton. Staton Dep. Tr. 25-26, Ramsey Dep. Tr. 44-45. Staton's counsel represents other applicants in which Mr. Ramsey is a "nonvoting stockholder." Ramsey Dep. Tr. 41-42.

Ms. Staton's knowledge of Staton's affairs is minimal. It was never explained to her why Staton was structured as a two-tier corporation. Staton Dep. Tr. 25. She has not been told whether she will have to pay money for equipment purchases or operating expenses. Staton Dep. Tr. 24. The shareholders agreement limits Mr. Ramsey's obligations for prosecution expenses to a fixed sum (Application, Exhibit 1, P. 2), but it is her understanding there is no dollar limitation on his obligation. Station Dep. Tr. 71-72.

Although the stockholders agreement obligates all parties to personally guarantee the bank letter (Exhibit 1, P. 3), she twice testified that it was only Mr. Ramsey's obligation to guarantee the loan. Staton Dep. Tr. 42-43, 74-75. When asked who Dwight R. Magnuson (Staton's consulting engineer) was, she initially testified she had never heard the name. Staton Dep. Tr. 30.

III. Analysis

A. Real-Party-In-Interest

The test for determining whether an individual is a real-party-in-interest is whether a person "has an ownership interests, or is or will be in a position to actually or potentially control the operation of the station." KOWL, Inc., 49 FCC 2d 962, 964, 31 RR 2d 1589, 1592-1593 (Rev. Bd. 1974). In Weyburn Broadcasting Limited Partnership v. FCC, 984 F.2d 1220, 71 RR 2d 1386, 1393-1394 (D.C. Cir. 1993), the Court of Appeals held that the Commission erred in specifying a real-party-in-interest issue against an applicant whose non-voting stockholder was providing funds and controlling the application by, inter alia, paying the applicant's bills directly.

This case presents a much stronger case for a real-party-interest issue than Weyburn. As in Weyburn, the nonvoting stockholder is providing funds and paying bills. While the voting stockholder had allegedly paid the \$6,000 hearing fee in Weyburn, Kenneth Ramsey has paid all expenses directly

except for minor, incidental expenses. Mr. Ramsey and his agent Charlie Thompson have taken virtually every action involved in the preparation and prosecution of the application. They initiated the idea to apply for the channel. They recruited a total stranger and allegedly gave her total control over the project. Ms. Staton went into the project knowing next to nothing about Mr. Ramsey. Mr. Ramsey, through Mr. Thompson, hired the engineer and counsel. Mr. Ramsey obtained the bank letter. Mr. Thompson found the transmitter site. Mr. Ramsey solely determined the applicant's structure. Mr. Ramsey pays the bills. It was Mr. Ramsey who determined new counsel was necessary, and current counsel represents his other applicants. Clearly, Messrs. Ramsey and Thompson have controlled the prosecution of the application.

Ms. Staton's lack of knowledge concerning Staton's affairs further reinforces the conclusion that she does not control the corporation. She is unknowledgable about her and Mr. Ramsey's obligations to the corporation. She did not know the basis for Mr. Emert's bills. She knew very little about Mr. Ramsey. She did not even recognize the name of Staton's consulting engineer. Under those circumstances, the Weyburn decision clearly requires the specification of a real-party-in-interest issue.

B. Misrepresentation Issue - Financial Certification

Ms. Staton's deposition testimony establishes that at the time she certified Staton had funds available from Home Federal Trust Bank, she did not have a bank letter from that bank. While she signed the application on November 13, she did not get a bank letter until sometime after November 15, when the application was filed.

When the Commission revised FCC Form 301 in 1989, it required applicants to have documentation in hand when they certify that they are financially qualified. Revision of Application for Construction Permit for Commercial Broadcast Station (FCC Form 301), 4 FCC Rcd 3853, 66 RR 2d 519, 529 (1989). Ms. Staton did not comply with the Commission's requirement for documentation, and her certification was therefore false and a misrepresentation.

The delay in obtaining the bank letter was critical. Since Ms. Staton had no documentation in hand when she certified, the only answer she could have given to Section III, Question 1, was "No." If she had answered truthfully, the application would have been returned as unacceptable for tender. Id. The fact that she obtained the bank letter after the application was filed does not help Staton, since a tenderability defect cannot be cured after the deadline for filing applications (in this case, November 15, 1991). FM Application Processing, 58 RR 2d 776, 784 (1985). Staton thus

had a clear motive to misrepresent that it was financially qualified, and a misrepresentation issue must be specified.

C. Misrepresentation - Review of Financial Statement

Another misrepresentation made by Staton in its application was the claim that Ms. Staton had reviewed Mr. Ramsey's financial statement before the application was filed. In fact, she has never seen Mr. Ramsey's financial statement. The intent to deceive that is an element of misrepresentation can be inferred from "the fact of misrepresentation coupled with proof that the party making it had knowledge of its falsity." Capital City Broadcasting Co., 8 FCC Rcd 1726, 72 RR 2d 439, 448 (Rev. Bd. 1993). In this case, Ms. Staton clearly knew she had not reviewed Mr. Ramsey's financial statement, but she certified an application which stated that she had reviewed that statement. A prima facie case of misrepresentation is present, and an issue must therefore be added.

IV. Conclusion

Accordingly, Huber asks the Presiding Judge to specify the issues listed above.


Respectfully submitted,

MARTHA J. HUBER

By


Morton L. Berfield

By


John J. Schauble

Cohen and Berfield, P.C.
1129 20th Street, NW, #507
Washington, DC 20036
(202) 466-8565

Its Attorneys

Date: July 9, 1993

APPENDIX RE DISCOVERY

If this petition to enlarge issues is granted, Huber reserves the right to depose Mildred Staton, Kenneth Ramsey, and Charles Thompson, as well as any other individual with relevant evidence whose identity is subsequently disclosed.¹

Huber requests that Staton be required to produce the documents listed below within five days after the Presiding Judge releases an order granting this petition. Staton shall produce these documents in accordance with the definitions and instructions contained in Huber's April 19, 1993 "Supplemental Document Request" addressed to Staton.

1. All documents relating to the June 15, 1991 letter from Home Federal Trust Bank, including documents relating to the transmittal of that letter to any party.

2. All documents relating to any review by Mildred Staton of any financial information relating to Kenneth Ramsey.

3. All documents previously produced to any other party in connection with the financial qualifications issues currently specified against Staton.

¹ It may turn out, however, that the information already available to Huber, along with discovery on the existing financial qualifications issue, will provide sufficient information to prepare for trial.

H-25-2E

FCC/MELLON NOV 15 1991

ATTACHMENT 1
BRYCE & EMERT
212 S. Peters Road
KNOXVILLE, TENNESSEE 37923
(An Association)

Philip J. Bryce
Stanley G. Emert, Jr.

David P. Klucken

DUPLICATE

P.O. Box 52225
Knoxville, Tennessee 37950-2225
615/ 690-5566
615/ 690-4967 (fax)

November 14, 1991

Federal Communications Commission
Mass Media Services
c/o Mellon Bank
Three Mellon Bank Center
525 William Penn Way
27th Floor, Room 153-2713
Pittsburgh, Pennsylvania 15259-0001

BY OVERNIGHT COURIER

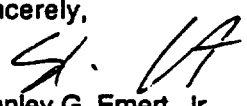
ATTN: Wholesale Lockbox Shift Supervisor

Re: Filing Fee, Staton Communications, Inc.
New FM Application

To Whom It May Concern:

I enclose the original and proper copies of the above noted application (FCC Form 301) with FCC Form 155 on behalf of Staton Communications, Inc. in the above noted matter. Attached is the applicant's filing fee in the total amount of \$2,030.00.

Please send a stamped copy of same to me in the enclosed self addressed stamped envelope. Thank you for your kind assistance.

Sincerely,

Stanley G. Emert, Jr.

SGE:

Enclosure

cc: Staton Communications, Inc.

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

For COMMISSION Fee Use Only	FEE NO:	For APPLICANT Fee Use Only
	FEE TYPE:	Is a fee submitted with this application? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	FEE AMT:	If fee exempt (see 47 C.F.R. Section 1.1112), indicate reason therefor (check one box): <input type="checkbox"/> Noncommercial educational licensee <input type="checkbox"/> Governmental entity
	ID SEQ:	FOR COMMISSION USE ONLY BPH-91115MU FILE NO.

Section I - GENERAL INFORMATION

1. Name of Applicant Staton Communications, Inc. c/o Mildred J. Staton			Send notices and communications to the following person at the address below: Name same and to Stanley G. Emert, Jr!		
Street Address or P.O. Box 1612 Gardiner Lane			Street Address or P.O. Box 3712 77th Ave. SE		
City Louisville	State KY	ZIP Code 40205	City Mercer Island	State WA	ZIP Code 98040
Telephone No. (Include Area Code) 502/458-1220			Telephone No. (Include Area Code) 206/236-5266		

2 This application is for: ☐ AM ☒ FM ☐ TV

(a) Channel No. or Frequency

234A CH 7

(b) Principal Community

City	State
New Albany	IN

(c) Check one of the following boxes:

☒ Application for NEW station

☐ MAJOR change in licensed facilities; call sign: _____

☐ MINOR change in licensed facilities; call sign: _____

☐ MAJOR modification of construction permit; call sign: _____

File No. of construction permit: _____

☐ MINOR modification of construction permit; call sign: _____

File No. of construction permit: _____

☐ AMENDMENT to pending application; Application file number: _____

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

3 Is this application mutually exclusive with a renewal application? ☐ Yes ☒ No

If Yes, state:

Call letters	Community of License
City	State

Section II - LEGAL QUALIFICATIONS

Name of Applicant

Staton Communications, Inc.

1. Applicant is: (check one box below)

☐

Individual

☐

General partnership

☒

For-profit corporation

☐

Other

☐

Limited partnership

☐

Not-for-profit corporation

2. If the applicant is an unincorporated association or a legal entity other than an individual, partnership, or corporation, describe in an Exhibit the nature of the application.

Exhibit No.

NOTE: The terms "applicant," "parties to this application," and "non-party equity owners in the applicant" are defined in the instructions for Section II of this form. Complete information as to each "party to this application" and each "non-party equity owner in the applicant" is required. If the applicant considers that to furnish complete information would pose an unreasonable burden, it may request that the Commission waive the strict terms of this requirement with appropriate justification.

If the applicant is not an individual, provide the date and place of filing of the applicant's enabling charter (e.g. a limited partnership must identify its certificate of limited partnership and a corporation must identify its articles of incorporation by date and place of filing):

to be filed on 11-15/91 Frankfort, KY

Section II - LEGAL QUALIFICATIONS (Page 2)

6. List the applicant, parties to the application and non-party equity owners in the applicant. Use one column for each individual or entity. Attach additional pages if necessary.

(Read carefully - The numbered items below refer to line numbers in the following table.)

1. Name and residence of the applicant and, if applicable, its officers, directors, stockholders, or partners (if other than individual also show name, address and citizenship of natural person authorized to vote the stock). List the applicant first, officers next, then directors and, thereafter, remaining stockholders and partners.

2. Citizenship.

3. Office or directorship held.

4. Number of shares or nature of partnership interests.

5. Number of votes.

6. Percentage of votes.

7. Other existing attributable interests in any broadcast station, including the nature and size of such interests.

8. All other ownership interests of 5% or more (whether or not attributable), as well as any corporate officership or directorship, in broadcast, cable, or newspaper entities in the same market or with overlapping signals in the same broadcast service, as described in 47 C.F.R. Section 73.3555 and 73.501, including the nature and size of such interests and the positions held.

	Staton Communications, Inc. c/o Mildred J. Staton 1612 Gardiner Lane Louisville, KY 40205	Mildred J. Staton 1612 Gardiner Lane Louisville, KY 40205	Kenneth L. Ramsey 3220 Roxburg Drive Lexington, KY 40503
2	Kentucky corp.	USA	USA
3	n/a	President/Secretary/ Treasurer/Director	none
4	all authorized shares issued	200 shares (VS)	800 shares (NVS)
	n/a	200	none
6	n/a	100%	-0-
7	see Exhibit 2	none	see Exhibit 2
8	see Exhibit 2	none	see Exhibit 2

SECTION III - FINANCIAL QUALIFICATIONS

NOTE If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 416,303.79

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
Home Federal Trust Bank of Georgia 104 Green Street Gainesville, GA 30501 Attn: W. A. Gainey, V.P.	404/535-9600	Bank	\$425,000.00
The Applicant's principals are legally obligated to the guarantee of a loan up to \$425,000.00 for this facility.			

SECTION VI - EQUAL EMPLOYMENT OPPORTUNITY PROGRAM

1. Does the applicant propose to employ five or more full-time employees?

☒ Yes ☐ No

If Yes, the applicant must include an EEO program called for in the separate Broadcast Equal Employment Opportunity Program Report (FCC 896-A).

See Exhibit 5

SECTION VII - CERTIFICATIONS

1. Has or will the applicant comply with the public notice requirement of 47 C.F.R. Section 73.3580?

☒ Yes ☐ No

2. Has the applicant reasonable assurance, in good faith, that the site or structure proposed in Section V of this form, as the location of its transmitting antenna, will be available to the applicant for the applicant's intended purpose?

☒ Yes ☐ No

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT.
U.S. CODE, TITLE 18, SECTION 1001.

I certify that the statements in this application are true and correct to the best of my knowledge and belief, and are made in good faith.

Name of Applicant Staton Communications, Inc.	Signature <i>Walter D. Staton</i>
Date November 13, 1991	Title <i>President</i>

FCC NOTICE TO INDIVIDUALS REQUIRED BY THE PRIVACY ACT
AND THE PAPERWORK REDUCTION ACT

The solicitation of personal information requested in this application is authorized by the Communications Act of 1934, as amended. The principal purpose for which the information will be used is to determine if the benefit requested is consistent with the public interest. The staff, consisting variously of attorneys, analysts, engineers and applications examiners, will use the information to determine whether the application should be granted, denied, dismissed, or designated for hearing. If all the information is not provided, the application may be returned without action having been taken upon it or its processing may be delayed while a request is made to provide the missing information. Accordingly, every effort should be made to provide all necessary information. Your response is required to obtain the requested authority.

Public reporting burden for this collection of information is estimated to vary from 71 hours 45 minutes to 301 hours 30 minutes with an average of 118 hours 28 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, can be sent to the Federal Communications Commission, Office of Managing Director, Washington, D.C. 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060-0027), Washington, D.C. 20503.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974, 5 U.S.C. 552(a)(3), AND THE PAPERWORK REDUCTION ACT OF 1980, P.L. 96-511, DECEMBER 11, 1980, 44 U.S.C. 3507.

Staton Communications, Inc.
FM Channel 234A
New Albany, Indiana

EXHIBIT 1

Stock Subscription and Shareholders' Agreement